

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

ESAU SERGIO PONTHER,

Defendant and Appellant.

C080129

(Super. Ct. No. CM041758)

Appointed counsel for defendant Esau Sergio Ponthier has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We find no arguable error that would result in a disposition more favorable to defendant; accordingly, we affirm the judgment.

BACKGROUND

Defendant stipulated to the factual basis contained in the probation report, which recited in relevant part that in the evening of August 14, 2014, defendant drove a car into a department store lot and parked, while watched by detectives who knew (based on tips

from confidential informants) that he sold drugs and possessed firearms. As he got out of his car, he acted evasively and a detective approached him and asked him questions, advising him that he was free to leave. As defendant left, another detective approached the passenger still inside the car. The detective shined his flashlight in the car and saw a baggie stuffed behind the car ashtray, which contained two hydromorphine/hydrochloride pills. The passenger denied ownership.

A search of the car revealed methamphetamine in the ashtray and a digital scale, 109 grams of methamphetamine, and a loaded, stolen Glock pistol hidden elsewhere. Other hydromorphine/hydrochloride pills were found discarded nearby. A search of defendant revealed \$100 in cash, a cell phone, and 161 grams of black tar heroin. A warrant search of defendant's storage unit revealed a Ruger revolver.

Defendant moved to suppress the evidence; his motion was heard and denied during the preliminary hearing and he did not renew it. He entered a negotiated plea of no contest to transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a); count 1) and being a convicted felon in possession of a Glock pistol (Pen. Code, § 29800, subd. (a)(1); count 3). In connection with count 1, defendant admitted he was armed with the Glock. (Pen. Code, § 12022, subd. (a)(1).) Defendant entered his plea and admission in exchange for a sentencing bid of five years eight months state prison and dismissal of the remaining counts and prior prison term allegation with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. He waived his right to appeal except for sentencing error.

The trial court denied probation and sentenced defendant to state prison for the upper term of four years for count 1 and a consecutive one-third the midterm or eight months for count 3. In connection with count 1, the court imposed a one-year enhancement for the arming allegation. The court awarded 16 days of total presentence custody credit and imposed various fees and fines.

Defendant appeals without a certificate of probable cause.

DISCUSSION

Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Butz, Acting P. J.

/s/
Murray, J.